

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BRUNO PREVEDI

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income :  
Taxes under Article ~~XX~~ 22 of the :  
Tax Law for the Year ~~XXXXXX XXXXXX~~ 1968.:

State of New York  
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of September, 1976, she served the within Notice of Decision by ~~(certified)~~ mail upon Bruno Prevedi ~~XXXXXX~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Bruno Prevedi  
Via Prestinari  
15 Milan, Italy 20158 and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative~~ ~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

10th day of September, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 10, 1976

TELEPHONE: (518) **457-3850**

Mr. Bruno Prevedi  
Via Prestinari  
15 Milan, Italy 20158

Dear Mr. Prevedi:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section ~~60~~ **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Paul E. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

~~XX~~

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
BRUNO PREVEDI	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax Under	:	
Article 22 of the Tax Law for the Year	:	
1968.	:	

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Petitioner, Bruno Prevedi, residing at Via Prestinari,  
15 Milan, Italy 20158, has filed a petition for redetermination of  
a deficiency or for a refund of personal income tax under Article 22  
of the Tax Law for the year 1969. (File No. 2-29867239). Petitioner  
waived a formal hearing in writing and submitted the case to the  
State Tax Commission upon the entire record contained in the file.

ISSUE

Whether the petitioner, Bruno Prevedi, timely filed his  
claim for a refund for the year 1968?

FINDINGS OF FACT

1. Petitioner, Bruno Prevedi, is a resident of Italy and a  
professional opera singer. During the period April 6, 1968 through  
November 16, 1968, petitioner was employed by the New York  
Metropolitan Opera. Petitioner's earnings from the Metropolitan  
Opera were subject to a withholding of \$2,398.90 for New York State  
personal income tax.

2. Petitioner, Bruno Prevedi, returned to Italy, turning over  
all his tax records to a Certified Public Accountant, Norman Eagenberg,  
instructing Mr. Eagenberg to prepare petitioner's tax return.

Mr. Eagenberg filed the petitioner's Federal return for the year 1968 but failed to file the petitioner's New York State return. Mr. Eagenberg was subsequently indicted by the Internal Revenue Service for tax fraud. Following Mr. Eagenberg's indictment the Internal Revenue Service audited the petitioner's tax returns. Petitioner, because his accountant failed to return his business records, was unable to substantiate his deductions. Consequently, the Internal Revenue Service disallowed all the petitioner's business expenses. After a long period of negotiation, the Internal Revenue Service settled petitioner's claim for a 1968 refund by allowing additional business expenses of \$8,502.99 and by granting a refund of \$4,192.74.

3. Petitioner, Bruno Prevedi's Italian counsel, Daniel Gilioli, Esq., wrote to the State Tax Commission March 9, 1973 seeking advice on the refund procedure. Mr. Warren Brundige, Income Tax Audit Supervisor, responded to Mr. Gilioli's letter by sending him copies of non-resident New York State income tax returns and instructions. In his cover letter Mr. Brundige mentioned the statute of limitations for filing for a refund under section 687 of the Tax Law. Mr. Gilioli responded to Mr. Brundige's letter of April 8, 1973, pointing out that it would have been impractical for the petitioner to have filed his New York State tax return before his federal tax liability was first determined. Louis Etlinger, Chief of the Regulation and Interpretations Section, answered Mr. Gilioli's April 5th letter on April 19, 1973, stating that Mr. Brundige's letter was not intended as a denial of a claim for refund, and requested that Mr. Gilioli have his client file a New York State non-resident income tax return. A copy of the Federal Audit Report covering all adjustments

made on petitioner's 1968 Federal income tax return was also requested. Mr. Gilioli proceeded to have petitioner prepare a New York State nonresident income tax return. By a letter dated May 14, 1973, Mr. Gilioli forwarded to the Income Tax Bureau petitioner's tax return, copies of Metropolitan Opera's withholding statement and the Federal audit report. On April 12, 1974, the Income Tax Bureau denied petitioner's claim for a refund on the grounds that the applicable statute of limitations had expired.

CONCLUSIONS OF LAW

A. That a claim for a refund must be made within three years of the filing of a timely return or two years from the date of the payment of a tax (Tax Law, section 687(a)). That payment by petitioner, Bruno Prevedi, of the tax withheld is deemed to have been made April 15, 1969 (Tax Law, section 687(i)).

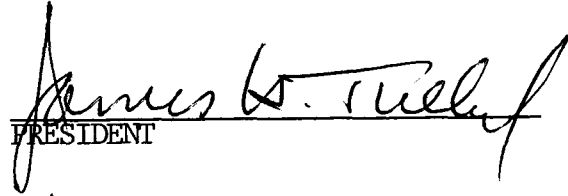
B. That petitioner, Bruno Prevedi's original inquiry concerning a claim for refund was not timely made. The last day for filing a claim for refund would have been April 15, 1971, two years from April 15, 1969.

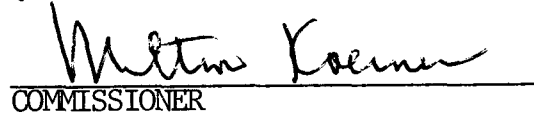
C. That after a taxpayer receives a report of Federal changes, he must file a claim for refund within two years from the time of the notice of such changes. (Tax Law, section 687(c)). This time period does not supersede the statute of limitations set out in section 687(a) when the taxpayer, as in the present case, did not file a New York State tax return until the time period specified in section 687(a) had expired, and the initial overpayment was not the result of Federal changes.

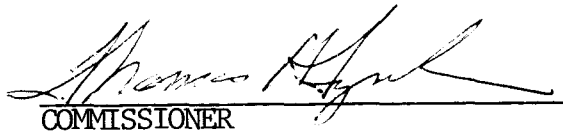
D. That the petition of Bruno Prevedi is denied.

DATED: Albany, New York  
September 10, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER